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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 11 1992

Federal Communications Commission
Office of the Secretary

In the Matter of)

)
Amendment of Rules Governing)
Procedures to be Followed When)
Formal Complaints are Filed)
Against Common Carriers)

CC Docket No. 92-26

REPLY COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits its reply to comments filed April 21, 1992 in the above-referenced proceeding.¹ USTA's member companies are common carriers which would be affected by the Commission's proposal to change its rules regarding procedures applied to formal complaints against common carriers.

Regarding the comments on the specific Commission proposals, USTA provides the following reply.

Answers. USTA agrees with commenting parties who opposed the Commission's proposal to reduce the time to file an answer to a complaint from 30 to 20 days.² This proposal, if adopted,

¹ Notice of Proposed Rulemaking, FCC 92-59, released March 12, 1992. [NPRM]

² See, comments of Federal Communications Bar Association (FCBA) at pp.3-4, Southwestern Bell at p.1, U S West at p.3, BellSouth at p.2, GTE at p.2, Centel at p.2 and MCI at p.7.

would impose an added burden on defendants by limiting their ability to investigate charges, analyze issues and prepare an adequate defense. A complainant will have had extensive time to prepare its complaint. If the complaint rests on actions which are years old, or are particularly complex, an answer will take time to prepare, especially in cases where relevant individuals have left the company and records are not easily accessible.

Motions. USTA concurs in the comments filed by the FCBA that it would not be particularly useful to file a motion to make the complaint more definite and certain with the answer.³ Such a motion should be permitted to be filed a short time after the answer is served.

Discovery. The Commission proposed to preclude objections to discovery based on relevance. According to the Commission, refusal to answer an interrogatory or an objection based on relevance would be deemed an admission of the allegations contained in the interrogatory.⁴ USTA agrees with commenters objecting to this proposal.⁵ Without a relevance objection, discovery could become a sweeping and unnecessary fishing expedition. Competitors would be encouraged to use the complaint

³ FCBA at p.7.

⁴ NPRM at paragraph 15.

⁵ FCBA at p.11, Pacific at p.5, GTE at p.3, Bell Atlantic at p.3, AT&T at p.5, NYNEX at p.8, BellSouth at pp.8-9 and U S West at p.8.

process to seek data or information rather than to redress a wrong. Further, additional delays would be inevitable as the Commission would probably be called on to resolve disputes regarding the nature of the allegations supposedly admitted.

Price Cap Carriers. USTA supports the recommendation of Southwestern Bell that complaints concerning prices which meet the price cap guidelines and earnings which comply with price cap sharing mechanisms should be automatically dismissed.⁶

Fees. USA recommends that the Commission evaluate complaint filing fees⁷ to ensure that costs are assessed against the cost causer.

USTA has supported the Commission's efforts to explore potential alternative dispute resolution techniques,⁸ which may be best suited for issues in which specific parties seek to resolve a specific problem, as in a formal complaint proceeding. The feasibility of successfully utilizing such techniques must be determined on a case-by-case basis at the option of the parties involved.

This proceeding may have been a candidate for negotiated

⁶ Southwestern Bell at p.2.

⁷ Id. at p.3, U S West at p.6.

⁸ NPRM at footnote 2.

rulemaking since it presents issues for resolution which in most cases will not affect a participant's ability to compete in the marketplace.

In conclusion, any amendment of the Commission's rules regarding formal complaints should be guided by principles of due process and basic fairness.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By 

Martin T. McCue
General Counsel

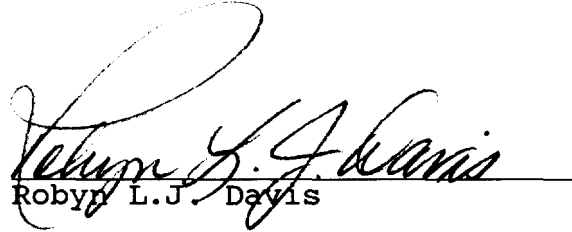
Linda Kent
Associate General Counsel

900 19th Street, NW, Suite 800
Washington, D.C. 20006-2105
(202) 835-3100

May 11, 1992

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on May 11, 1992
copies of the foregoing Reply Comments of of the United States
Telephone Association were either hand-delivered, or deposited in
the U.S. Mail, first-class, postage prepaid to the persons on the
attached service list.


Robyn L.J. Davis

Robert L. James
John D. Seiver
Susan Whelan Westfall
Cole, Raywid & Braverman
1919 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006

Leon M. Kestenbaum
Phyllis A. Whitten
Sprint Communications Co.
1850 M Street, NW
11th Floor
Washington, DC 20036

Albert H. Kramer
Helen M. Hall
Keck, Mahin & Cate
1201 New York Avenue, NW
Penthouse Suite
Washington, DC 20005

Daryl L. Avery
Peter G. Wolfe
Brenda K. Pennington
PSC of DC
450 Fifth Street, NW
Washington, DC 20001

Theodore D. Frank
Vonya B. McCann
Arent, Fox, Kintner, Plotkin
and Kahn
1050 Connecticut Avenue, NW
Washington, DC 20036

Celia Nogales
Pacific Telesis
1275 Pennsylvania Avenue, NW
Fourth Floor
Washington, DC 20004

Lawrence E. Sarjeant
Anna Lim
U S West
1020 19th Street, NW
Suite 700
Washington, DC 20036

Robert L. Hoegle
Timothy J. Fitzgibbon
Carter, Ledyard & Milburn
1350 I Street, NW
Suite 870
Washington, DC 20005

Jerome K. Blask
Daniel E. Smith
Gurman, Kurtis, Blask &
Freedman, Chartered
1400 16th Street, NW
Suite 500
Washington, DC 20036

Michael J. Hirrel
1300 New York Avenue, NW
Suite 200-E
Washington, DC 20005

Francine J. Berry
Mark C. Rosenblum
AT&T
295 North Maple Avenue
Basking Ridge, NJ 07920

Gail L. Polivy
GTE
1850 M Street, NW
Suite 1200
Washington, DC 20036

Patrick A. Lee
Edward E. Niehoff
NYNEX
120 Bloomingdale Road
White Plains, NY 10605

Michael D. Lowe
J. Manning Lee
Bell Atlantic
1710 H Street, NW
Washington, DC 20006

David J. Wittenstein
Dow, Lohnes & Albertson
1255 23rd Street, NW
Suite 500
Washington, DC 20037

Roy L. Morris
Allnet Communication Services,
Inc.
1990 M Street, NW
Suite 500
Washington, DC 20036

Lisa E. Manning
Williams Telecommunications
Group, Inc.
P.O. Box 2400
One Williams Center
Suite 3600
Tulsa, OK 74102

Carol F. Sulkes
Central Telephone Co.
8745 Higgins Road
Chicago, IL 60631

Frank W. Krogh
Donald J. Elardo
MCI
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Floyd S. Keene
Barbara J. Kern
Ameritech Operating Cos.
2000 West Ameritech Center
Drive
Room 4H88
Hoffman Estates, IL 60196

Durward D. Dupre
Richard C. Hartgrove
J. Paul Walters
Southwestern Bell
1010 Pine Street
Room 2114
St. Louis, MO 63101

William B. Barfield
Richard M. Sbaratta
Helen A. Shockey
BellSouth
1155 Peachtree Street, NE
Suite 1800
Atlanta, GA 30367

John D. Lane
Federal Communications Bar
Association
1150 Connecticut Avenue, NW
Washington, DC 20036